

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

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| IN RE: GREENWAY GOLF CENTER, INC. |) | |
| 5484 Summer |) | Shelby County |
| Parcel ID Map 88, Blk. 069, Parcel 001C |) | |
| Commercial Property |) | |
| Tax Years 2001, 2002 |) | |

ORDER
Statement of the Case

These appeals have been filed on behalf of the above noted taxpayer by Mr. Jerry Caruthers (in a timely fashion). Mr. Caruthers subsequently filed Motions to Dismiss Increase in Assessment by Shelby County Board of Equalization in both tax years. Mr. Caruthers states in the application for the appeal, in response to question 16 of the form for Tax year 2001, that "*Assessment increased by County Board staff after session*" and for Tax Year 2002, he alleges that "*Assessment increased without notice of hearing from CBOE(County Board of Equalization)*" as his basis/grounds for the appeals. The Assessor for Shelby County did not file an answer for tax year 2001 but for Tax Year 2002 states that, "The County Board adjourned for tax year 2002 on March 19, 2003. The 'Correction Letter' was issued on January 21, 2003. Therefore the notice was issued more than five (5) days before the adjournments of the County Board."

Findings of Facts and Conclusions of Law

A taxpayer/ property owner has the right to contest an assessment that he/she believes is unfair.

TENNESSEE CODE ANNOTATED § 67-5-1407 sets forth the grounds for an appeal to the County Board:

(a) (1) Any owner of property or taxpayer liable for taxation in the state has the right by personal appearance, or by the personal appearance of the duly authorized agent of the owner of the property, which agency shall be evidenced by a written authorization executed by the owner or taxpayer, or by representation by an attorney, to make complaint before the county board of equalization on **one (1) or more of the following grounds:**

(A) Property under appeal or protest by the taxpayer has been erroneously classified or sub classified for purposes of taxation;

(B) Property under appeal or protest by the taxpayer has been assessed on the basis of an appraised value that is more than the basis of value provided for in part 6 of this chapter; and

(C) Property other than property under appeal or protest by the taxpayer has been assessed on the basis of appraised values which are less than the basis of value provided for in part 6 of this chapter. [emphasis supplied]

This statute must be analyzed and read in conjunction with TENNESSEE CODE ANNOTATED § 67-5-1412 , which states in relevant part, pertaining to an appeal of a county or other local board action to the state board, that such appeal is only authorized as follows:

(a) (1) Any taxpayer, or any owner of property subject to taxation in the state, who is aggrieved by any action taken by the county board of equalization or

other local board of equalization has the right to a hearing and determination by the state board of equalization of any complaint made **on any of the grounds provided in** [TENNESSEE CODE ANNOTATED] § 67-5-1407. . . . [emphasis supplied]

None of the above noted "grounds" match the allegations contained in Mr. Caruthers' appeals. Prior to the State Board of Equalization hearing an appeal another point must be determined. Does the State Board have the authority and jurisdiction to hear the appeal pursuant to TENNESSEE CODE ANNOTATED § 67-5-1501? In reviewing the statute, the basis/ground that Mr. Caruthers complains of, does not in this administrative judges' opinion, qualify.

The jurisdiction and duties are set out below for the filing of appeals:

- (a) The state board of equalization has jurisdiction over the **valuation, classification and assessment** of all properties in the state.
- (b) The board shall have and perform the following duties:
 - (1) Receive, hear, consider and act upon complaints and appeals made to the board;
 - (2) Hear and determine complaints and appeals made to the board concerning exemption of property from taxation;
 - (3) Take whatever steps it deems are necessary to effect the equalization of assessments, in any taxing jurisdiction within the state in accordance with the laws of the state;
 - (4) Carry out such other duties as are required by law; and
 - (5) Provide assistance and information on request to members and committees of the general assembly relative to the taxation, classification and evaluation of property. [emphasis supplied]

Further, a judicial interpretation of the statute states:

Procedures set forth in T.C.A. § 67-1-901, T.C.A. § 67-5-509, T.C.A. § 76-5-1407, and T.C.A. § 67-5-1501 **are the exclusive means for challenging an erroneous property tax assessment**, outside of filing a lawsuit based on purely legal issues. The Metro. Government of Nashville & Davidson County Ex Rel. State v. Taxpayers, - S.W.3d -, 2005 Tenn. App. LEXIS 195 (Tenn. Ct. App. Mar. 31, 2005), appeal denied 2005 Tenn. LEXIS 743 (Tenn. Aug. 29, 2005). [emphasis supplied]

The challenge levied against the County Board is legal in nature¹. Even assuming arguendo that the State Board had the authority to hear the appeal Mr. Caruthers' argument is not substantiated. Mr. Caruthers as the Movant has the burden to prove the ground alleged, here he has failed to do so. Uniform Rules of Administrative Procedure 1360-4-1-.09

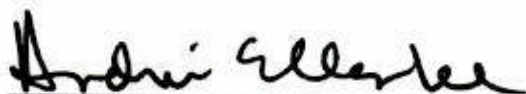
¹ "The final manner of appealing an error in assessment occurs where the claimed error raises purely legal issues. In that case, the taxpayer may bypass the administrative process altogether and proceed directly through the courts". *Fentress County Bank v. Holt*, 535 S.W.2d 854,857 (Tenn. 1976). Further, pursuant to T.C.A. § 67-5-1514 (c)(D) it is questionable whether Mr. Caruthers would be the proper person to represent this taxpayer making this argument.

The Board certainly has an inherent authority to correct clerical mistakes while it is in session as the proof obviously establishes in this case.² In challenging the actuality legality of the County Board actions, Mr. Caruthers has chosen the wrong forum.

Therefore considering all the foregoing, the Motion to Dismiss is denied, it is further the opinion of the administrative judge that the appeal itself is dismissed for lack of proper authority of this Board to hear such arguments.

It is so **ORDERED**.

Entered on this the 10th day of July, 2006.



ANDREI ELLEN LEE
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Jerry Caruthers, Caruthers and Associates, Agent
John Zelinka, Attorney for the Shelby County Assessor of Property
Tameaka Stanton-Riley, Shelby County Assessor of Property Office

² For Tax year 2002 the proof shows that the session ended on March 19th, 2003.